

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

STATE OF ILLINOIS,)
ILLINOIS DEPARTMENT OF)
TRANSPORTATION,)
)
 Petitioner,)
)
 v.)
)
THE TERMINAL RAILROAD ASSOCIATION)
OF ST. LOUIS,)
)
 Respondent.)
)
Petition for an Order granting authority to)
construct two grade separation structures)
carrying Relocated Interstate Route 70 (FAP)
Route 999) over and across Wiggin's Ferry)
Company's property, including TRRA's Wiggin's)
#2 yard tracks at Railroad Mile Post 1.9 Wiggins)
Main, near the Village of Brooklyn in St. Clair)
County, Illinois)

Docket No. T09-0074

**IDOT'S RESPONSE TO
TRRA'S REQUEST FOR ADDITIONAL TIME TO FILE HEARING EXHIBITS**

The Petitioner, State of Illinois, Illinois Department of Transportation ("IDOT"), respectfully submits the following response to TRRA'S Request For Additional Time To File Hearing Exhibits ("Request"). For the reasons stated in this response, IDOT reluctantly does not object to TRRA's Request. But IDOT reserves its right to object to any attempts by TRRA to expand the scope of its Request at the upcoming evidentiary hearing and requests that TRRA be required to file and serve its exhibits on July 27, 2009.

1. In response to TRRA's previously filed motion for extension of time, on July 10, 2009 Chief Administrative Law Judge Dean Jackson entered an order scheduling a hearing on IDOT's Petition To Construct Two Grade Separation Structures ("Petition") for July 30, 2009 and requiring the parties to serve their proposed exhibits "at least one week prior to the Hearing."

2. At all times after entry of the July 10, 2009 scheduling order, IDOT has been preparing for an evidentiary hearing on July 30, 2009. IDOT submitted its exhibits to the Illinois Commerce Commission and served the parties on July 23, 2009 in accordance with the scheduling order. Service was made by sending the exhibits by overnight express mail on July 22, 2009.

3. At no time did IDOT suggest to any member of the ICC staff or to counsel for TRRA that it would agree to convert the evidentiary hearing to a status hearing as long as issues remained outstanding. Paragraph 1 of TRRA's Request alleges that TRRA somehow, despite the clear wording of the July 10, 2009 order, "was under the impression that the hearing would consist of a status conference." Paragraph 1 also contains the ambiguous statement that in an email on July 22, 2009, counsel for TRRA "confirmed this understanding with counsel for the Illinois Department of Transportation ("IDOT")." Unstated is the fact that the email was sent to IDOT's counsel after 8:00 p.m. on July 22, 2009 and IDOT had no "understanding" with TRRA that the July 30, 2009 hearing would be a status conference. IDOT has consistently stated to TRRA's counsel that it was preparing for an evidentiary hearing on July 30th.

4. Apparently, TRRA failed to file any exhibits. Under normal circumstances, IDOT would object to an attempt by TRRA to file exhibits on July 28 for a hearing long-scheduled to start on July 30. But IDOT is compelled to agree to TRRA's Request because of the overriding public interest in keeping on schedule this vital public project – the construction of a new bridge across the Mississippi River to re-route I-70. Construction of the new Mississippi River Bridge is of the highest priority for IDOT. Since March, 2008, TRRA has been advised that construction is scheduled to begin in 2010. Bids for construction of the main span of the bridge – the area at issue in this Petition – are scheduled to be advertised in September, 2009 with the goal of awarding construction contracts in October, 2009. IDOT simply cannot risk delaying the ICC proceedings by objecting to a late filing of exhibits by TRRA even if the late filing gives TRRA a tactical litigation advantage.

5. Since March, 2008, IDOT and the Missouri Department of Transportation (collectively, "the DOTs") have been engaged in negotiations with TRRA for planning and designing the new Mississippi River Bridge as it affects TRRA property. The DOTs have provided TRRA with pier and

access road design locations. The DOTs have requested, received and incorporated comments and changes into the design plans that have been approved by TRRA. TRRA has approved the pier locations of the bridge. TRRA has approved both the horizontal and vertical clearance, which exceeds the ICC requirements of 23 feet. In response to TRRA's requested changes in its February 13, 2009 correspondence, the DOT's revised TS&Ls which were submitted to TRRA on March 13, 2009 reflecting the majority of TRRA's requested changes. TRRA has also approved the location of the access roads. To date, IDOT has reimbursed TRRA approximately \$45,000 for TRRA's preliminary engineering services relating to reviewing and commenting on design plans pursuant to a preliminary engineering agreement TRRA executed in May, 2008 with IDOT.

6. At this point, the DOTs and TRRA have reached substantial agreement on the grade separation structures for the new Mississippi River Bridge, as set forth in the most recent draft of the Grade Separation Agreement, which is Exhibit 5 to IDOT's Appendix of Hearing Exhibits filed on July 23, 2009.


7. Paragraph 5 of TRRA's Request states: "TRRA believes that only two issues remain unresolved and for the ICC's consideration. Those are the provision of lighting and fencing on the structure to promote safety on the railroad yard." IDOT agrees with this statement and, as a result, IDOT's offer of testimony will be limited to these two issues.

8. IDOT will strenuously object to any attempt by TRRA to raise issues at the July 30, 2009 hearing other than the issues of whether the lighting and fencing requested by TRRA is to be provided on the proposed bridge. Also, IDOT reserves its right to request additional time to respond to TRRA's proposed exhibits after IDOT has received them.

WHEREFORE, IDOT does not object to TRRA's Request provided the issues before the hearing are as described in Paragraph 5 of TRRA's Request and IDOT has adequate time to respond to any exhibits filed by TRRA pursuant to its request. IDOT requests that TRRA be required to file and serve its exhibits by July 27, 2009.

Respectfully submitted,

ILLINOIS DEPARTMENT OF TRANSPORTATION

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**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

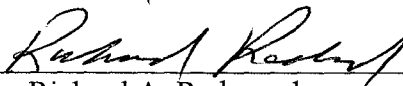
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TRRA's Wiggins #2 yard tracks at)	
Railroad Mile Post 1.9 Wiggins Main,)	
near the Village of Brooklyn in St. Clair)	
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PETITIONER'S NOTICE OF FILING
IDOT'S RESPONSE TO TRRA'S REQUEST FOR ADDITIONAL
TIME TO FILE HEARING EXHIBITS

PLEASE TAKE NOTICE that Petitioner, The State of Illinois, Illinois Department of Transportation, by and through its counsel, hereby files IDOT's Response to TRRA's Request For Additional Time to File Hearing Exhibits, a copy of which is attached and hereby served upon you.

Respectfully submitted,

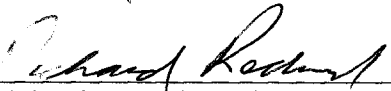
ILLINOIS DEPARTMENT OF TRANSPORTATION

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CERTIFICATE OF SERVICE

I, Richard A. Redmond, an attorney, hereby certify that I caused to be served the foregoing IDOT's Response to TRRA's Request For Additional Time to File Hearing Exhibits upon the individuals on the attached service list by first class mail via the United States Post Office and via e-mail on July 24, 2009.



Richard A. Redmond

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